

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 1523

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:30 p.m., April 4, 2011, on the application of **RAYMOND F. WEISMAN, JR.** ("Applicant"). The Applicant is requesting a variance from the strict application of the intra-family transfer provision due to changes in circumstances which have occurred since entering into the agreement and as such is seeking relief from the transfer of ownership limitation associated with said provisions. The property is located on 10185 Sherwood Manor Drive, St. Michaels, Maryland 21663 and is in the Rural Conservation (RC) zone. It is owned by Raymond F. Weisman, Jr., et al, Trustees. The request is made in accordance with Chapter 190 Zoning, Article II §190-14 I (2) (f) and Article IX, §190-182 of the Talbot County Code ("Code").

Present at the hearing were Board of Appeals members Phillip Jones, Acting Chairman, Betty Crothers, John Sewell, Margaret Young, and John Mathis. The Applicant was represented by Russell C. Dashiell, Jr., Esquire, Widdoson and Dashiell, P.A., 312 West Main Street, Suite A-South, P.O. Box 4460, Salisbury, Maryland 21803-4460. Jesse B. Hammock, Esquire, Parker, Counts & Melton, LLP, 129 North Washington Street, P.O. Box 1209, Easton, Maryland, 21601, represented the trust beneficiaries Brian Joseph Weisman, Jr., Thomas Anthony Weisman, Rebecca Marie Weisman, and Raymond William Weisman. Stephen Miller, Esquire, 201 North Charles Street, #1800, Baltimore, Maryland 21201 represented trust beneficiaries Brian Joseph Weisman and Brenda Ann Weisman. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for variances with Attachment A (three pages).

2. Consisting of papers marked as Exhibit 1 and Exhibit 2. Exhibit 1 consists of a Site Plan, Tax assessment sheet for Tax Map 14, parcel 50, Deed recorded at Liber 1364, folio 393-97, and Revocable Trust Agreement (nine pages). Exhibit 2 is a Site Plan of the property labeled "Exhibit 2".
3. Copy of portion of the Talbot County tax map with the property highlighted.
4. Appeals Notice of Public Hearing of hearing scheduled for October 19, 2009 and 4A. Appeals Notice of Public Hearing of hearing scheduled for April 4, 2011.
5. Certificate of publication of the Notice of Public Hearing from the Star-Democrat for the October 19, 2009 hearing date and 5A. Certificate of publication of the Notice of Public Hearing from the Star-Democrat for the April 4, 2011 hearing date.
6. Notice of hearing for adjacent property owners for October 19, 2009 hearing date and 6A. Notice of hearing for adjacent property owners for April 4, 2011 hearing date.
7. Copy of critical area variance standards from the Code with the Applicant's written response to each applicable requirement.
8. Copy of non-critical area variance standards from the Code with the Applicant's written response to each applicable requirement.
9. Staff memorandum.
10. Sign Maintenance Agreement and 10A. Affidavit of Service, signed by Jeffrey Whitzel.
11. Copy of email from Ren Serey, Critical Area Commission, dated October 19, 2009.
12. Independent Procedure Disclosure & Acknowledgement Form.
13. Aerial photograph.
14. Authorization letter provided by Raymond F. Weisman, Jr.
15. Letter from Russell Dashiell, Jr., dated September 30, 2010.
16. Letter from Chris Corkell, dated October 20, 2010.

17. Notice of Assignment from the Circuit Court for Talbot County, Maryland.
18. Letter from Russell Dashiell, Jr. with Motion for Stay of Variance Hearing, dated April 20, 2010.
19. Consent Order To Motion For The Court To Review And Consider Trustee's Request For Variance Relating To Trust Properties issued by the Circuit Court for Talbot County, Maryland and dated February 8, 2011.
20. Transcript of Circuit Court for Talbot County, Maryland proceedings in Case No. 20-C-09-006911 MP, on February 8, 2011.
21. Letter from Russell C. Dashiell, Jr., with various motion and orders filed in the aforementioned Circuit Court case.

This matter was first before the Board of Appeals on October 19, 2009. At that hearing it became clear to the Board that numerous legal issues regarding the trust involved in the variance request should be settled by the Circuit Court for Talbot County before the Board could consider the variance request. The matter was continued several times until the Board was notified that matters before the Circuit Court were completed. At the instant hearing the attorneys for the various beneficiaries of the trusts having an interest in the subject property said their clients agreed to the facts as set forth in the original application. In addition, each represented to the Board that they were in agreement with the request for a variance from the strict application of the intra-family transfer provision due to changes in circumstances.

The parties presented evidence that the Applicant, Raymond J. Weisman, Jr., Trustee under Revocable Trust Agreement dated June 17, 2004 maintains ownership and responsibility for providing a home for Brian Joseph Weisman (younger brother of Trustee) and his spouse, Brenda Ann Weisman, as well as their four children, Brian F. Weisman, Jr., (age 20), Thomas Weisman (age 16), Rebecca Weisman (age 14), and Raymond Weisman (age 13), at 10185 Sherwood Manor Road outside Claiborne, Maryland. The property is more fully described as Lot 1A "Weisman Subdivision" in a deed from

Raymond F. Weisman, Jr., et al. to Raymond F. Weisman, Jr., et al., Trustees, dated June 17, 2004. The deed and a plat of the property are included in the record attached to the application for variance as Exhibit 1.

The property is located in a Rural Conservation District and is subject to the Interfamily Transfer Restrictions of the Code. Lot 1A is the last portion of two 20 acre parcels of land owned by the Weisman family since the 1970s when the two adjoining tracts, originally the lands of Sherwood Manor, were acquired by Raymond and Helen Weisman, parents of the Trustee, Raymond F. Weisman, Jr. and the trust beneficiary, Brian Joseph Weisman. The plat of the property dated March 1969 is attached to the application for variance as Exhibit 2.

The current Lot 1A was subdivided in 1992 by Raymond and Helen Weisman to provide a home for their son, Brian Joseph Weisman and his family, in close proximity to them. Raymond Weisman died in 2000 and Helen Weisman died in 2007. In their respective Wills, filed for probate with the Orphans Court for Talbot County, each of the parents provided Trusts for the care and maintenance of their son, Brian Joseph Weisman and his family. Raymond F. Weisman, Jr. was initially appointed and is currently serving as trustee of the of those trusts and since 2004 has also served as Trustee of the real property in question under the Revocable Trust Agreement aforesaid. All three of the Trusts are being administered in order to provide a secure and comfortable home for Brian Joseph Weisman and his family.

Currently no Weisman family members live adjacent to Lot 1A or in Talbot County. The closest family member is the Trustee who is serving as a Roman Catholic Priest in Salisbury, Maryland and is subject to transfer at various times by the Bishop of the Diocese of Wilmington. Brian and his family have occupied the property at Lot 1A which was improved by a one and one-half story residence erected in 1992. At the present time Brian Joseph Weisman has been designated as having a disability by the Social Security Administration and he and his family also receive benefits from the Talbot County Department of Social Services. In addition, Mr. Weisman is otherwise apparently unable to maintain the

property including the residence. The home, given the size of the family, is not sufficient for their needs. To this point, the Trustee/Applicant has been able to maintain the property in some fashion for the benefit of the family and is also charged with providing for the later education and further support of the Weisman children. The expenses of maintaining the property are severely depleting the Trust funds that might otherwise be marshaled to provide for maintenance and education of the children in the future. In addition, the eldest of the children, Brian J. Weisman, Jr., is severely disabled and unable to live apart and independent from the family or provide for himself in any fashion. The Applicant is attempting to secure an alternate residence in Talbot County within the same district for the family. This would allow for a substantial savings on a property that is no longer suitable for the family and would allow for the purchase of another residence that will more fully accommodate their needs while permitting the savings and marshaling of finite Trust assets to provide for the family as well as the children in the future.

The property in question was subdivided in 1992 and designated as an Interfamily Transfer at a time when Raymond and Helen Weisman were alive and lived in an adjacent property and could also help to see to the needs of their son and his family. There was no intent at any time to subdivide the Weisman property for a commercial gain. With the death of the Weisman parents, their ability to provide for their son and his family has shifted to the Trusts that they set up in their Wills. This constitutes a change in circumstances for a number of reasons: (a) no other Weisman family member lives in Talbot County or anywhere adjacent to the property; (b) the cost of maintaining the property has rendered the inability to sell the property as an on-going hardship on the family since it is presently unsuitable for their living purposes as well as a drain on the limited Trust resources that have been maintained to provide for the support of the family and for the education of the children. Relief in the form of a variance to allow transfer of ownership of the property is necessary due to the change in circumstances.

The Circuit Court for Talbot County, Maryland, exercising jurisdiction over the Trusts, has by consent order permitted the parties to seek this variance from the Board of Appeals.

At the hearing the Applicant offered four exhibits which were admitted without objection. They were Applicant's Exhibits:

1. Deed dated May 25, 1992 recorded in the Land Records of Talbot County, Maryland at Liber 727, folio 276.
2. Petition of Trustee for Court to Oversee Administration of Discretionary Trusts prepared for filing in the Circuit Court for Talbot County.
3. Order for Show Cause issued by the Circuit Court for Talbot County on September 23, 2009.
4. Note dated December 17, 2010 in the original amount of \$24,288.00.

No one appeared in opposition to the application.

The Board then considered the application. Upon motion, duly made and seconded, the Board approved the requested variance by a vote of 5 to 0. The Board made the following findings, all based upon the evidence before the Board:

1. The lot was created as part of a bona fide intra-family transfer and not with the intent of subdividing the original parcel for the purpose of ultimate commercial sale.
2. A change in circumstances has occurred since the original transfer was made that is not inconsistent with the Code and warrants an exception on the basis of financial hardship.
3. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of the ordinance result in unwarranted hardship.
4. A literal interpretation of the ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone.

5. The granting of the variance will not confer upon the property owner any special privilege that would be denied by the ordinance to other owners of lands or structures within the same zone.
6. The variance request is not based on conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
7. The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law, the Talbot County Critical Area Program and the Critical Area provisions of the ordinance.
8. The variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship.
9. The need for the variance is not because the lot is a legal nonconforming lot.
10. Unique characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that a literal enforcement of the provisions of the Code would result in practical difficulty or unreasonable hardship in enabling the Applicant to develop or use the property.
11. The need for the variance is not based upon circumstances which are self-created or self-imposed.
12. Greater profitability or lack of knowledge of the restrictions was not considered as sufficient cause for the variance.

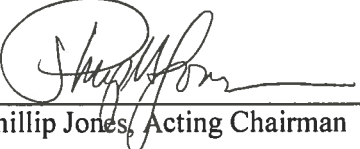
13. The variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties.
14. The variance does not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, **RAYMOND F. WEISMAN, JR.** (Appeal No. 1523) is **GRANTED** the requested variance from the strict application of the intra-family transfer provisions of the Code, consistent with the evidence presented to the Board of Appeals.


GIVEN OVER OUR HANDS, this 23RD day of JULY, 2011.

TALBOT COUNTY BOARD OF APPEALS


Phillip Jones, Acting Chairman


Betty Crothers


John Sewell


Margaret Young


John Mathis

Board of Appeals/1523. Weisman Variances CANCA